Submission for the record of SRM Subcommittee Hearing of June 25, 2019: Recent Limitations to the SALT Deduction & its Harm to Communities, Schools, First Responders, and Housing Values by Hugh J. Campbell Jr. CPA, CFCS

Chairman Thompson, Ranking Member Smith, and distinguished members of the Subcommittee: I am a semi-retired Certified Public Accountant (CPA) with over 50 years of experience, as well as a Certified Financial Crime Specialist (CFCS) for more than five years. My professional experience includes serving as Chief Risk Officer of a public company and Chief Audit Executive of two public companies.

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TCJA SALT Cap enactment – The Devil is in the Details

As originally proposed, 2017 tax reform provided for State and Local Taxes (SALT) to be 100% non-deductibility. This was subsequently modified to become what is now known as the SALT Cap, allowing for Individuals to deduct up to $10k per year. As a result, revenue projection by The Joint Committee on Taxation (JCT) for the SALT and Mortgage Interest Caps dropped to $668.4 billion and the cost projection for the Alternative Minimum Tax (AMT) Relief was reduced to $637.1 billion (within less than 5% of the aforementioned revenue).

Not only is there very clear indication that the Alternative Minimum Tax (AMT) Relief was financed by the SALT Cap, The Tax Foundations November 6, 2017 article: ***How the State and Local Tax Deduction Interacts with the AMT and Pease Limitation*** highlights the complexity, and source of considerable confusion in understanding the interaction between the state and local tax (SALT) deduction and its interactions with the Alternative Minimum Tax (AMT) and the Pease Limitation.

This complexity is the source of considerable confusion regarding the degree of direct benefits that the SALT deduction ultimately accrues to upper-income taxpayers. As the subcommittee works toward a final SALT Cap repeal/relief bill, great care must be taken to consider the interact between SALT, the Pease limitation and AMT. this will reduce the cost of SALT Cap repeal/relief versus what it would otherwise be and significantly reduce the criticism regarding benefiting upper-income taxpayers. This subject is discussed in greater depth in the article, ***Many Rich Fretting About SALT Didn't Get Break Before Trump Law - Bloomberg*** and the article, ***A Sneaky Limit Is Gone For Wealthy Clients' Deductions*** zeros-in specifically on the Pease Limitation.

Why Judge J. Paul Oetken's description of the SALT Cap "as a rope to the neck with a gradual squeezing over time", Potentially Applies to Charities, Big-Time.

On June 18, 2019, U.S. District Judge J. Paul Oetken didn't signal which way he's likely to rule in a case where the U.S. Treasury seeks dismissal of a suit over State and Local Tax (SALT) deductions. He agreed with Assistant U.S. Attorney Jean-David Barnea's argument that "this isn't a 'gun to the head'" of the states forcing them to change their tax policy. "But it's a rope to the neck with a gradual squeezing over time,"

In CHAIRMEN THOMPSON OPENING STATEMENT AT SELECT REVENUE MEASURES SUBCOMMITTEE HEARING ON HOW RECENT LIMITATIONS TO THE SALT DEDUCTION HARM COMMUNITIES, SCHOOLS, FIRST RESPONDERS, AND HOUSING VALUES he indicates that charities are extremely concerned about the potential future impact on giving.

In the Tax Policy Center blog post titled **Fixing The TCJA: How Should Congress Treat the Alternative Minimum Tax?** Robert McClelland points out: … like nearly all the law's individual income tax provisions, AMT relief ends after 2025 and millions of taxpayers would land back on the parallel tax. He continues, suggesting that the Alternative Minimum Tax (AMT) be kept as it is today and the current $10,000 SALT Cap be made permanent.

The following two articles, recently in the news, report the challenges current facing Nonprofits resulting from the TCJA of 2017, $10K SALT Cap:

Trump's Tax Law Made Americans Less Charitable, Nonprofits Say

Highlights from this article, follow:

According to a report released on June 18, 2019 by Giving USA, donations by individuals fell an estimated 3.4%, after adjusting for inflation, last year,

Total estimated giving, by corporations, foundations, as well as individuals, fell about 1.7%, after inflation, to $427.7 billion. Increases in donations from corporations and foundations helped offset some of the losses from individuals. Religious congregations are likely to be among the most affected by the decline of individual contributions because most of their donors are also members of the church, synagogue or mosque.

Giving Drops Despite Advisors Pitching It More - The Nonprofit Times

Highlights from this article, include:

Almost every metric monitored by the Fundraising Effectiveness Project (FEP) decreased during the first quarter of 2019, leading to concerns about the growth of charitable giving for the rest of the year. It mirrors reports from the first quarter of 2018.

Perhaps the most troubling figure is the number of new donors, which plummeted by 10.5 percent for the quarter. Data in the 2019 first quarter report shows the total number of donors decreased by 5.7 percent during the first quarter of 2019 compared to the first quarter of 2018, while overall revenue dropped 2.2 percent.

By the end of the year in 2018, our quarterly reports showed that the growth in annual charitable giving dropped tremendously, from roughly 8 percent in 2017 to just 1.6 percent in 2018."

Conclusion:

It appears that Judge Oetken's comment in the context of **New York, et al. v. Mnuchin, et al**, regarding the Plaintiff States, that the SALT Cap is "as a rope to the neck with a gradual squeezing over time', also applies to Non-Profits. If the SALT Cap fails to end after 2025, as suggested by the Tax Policy Center blog post the squeezing applies to Non-Profits will become permanent.

SALT Apocalypse

The Bloomberg article of May 21, 2019 titled: Blue States Warned of a SALT Apocalypse. It Hasn't Happened was referenced during morning session of the June 25th SRM Subcommittee hearing, highlights follow:

> To listen to New York Governor Andrew Cuomo, the 2017 Republican tax overhaul that limited state and local deductions to $10,000 was a devastating blow. The rich would flee, the middle class would suffer and blue state budgets would bleed.
>
> > Perhaps this will come to pass over time, but so far, there are almost no signs of it.
>
> Still, there are some indications that residents in high-tax states are fretting about the law. Thirteen percent of house-hunters in both New York and California said they have started looking for

homes in states with lower taxes, according to a recent survey by brokerage Redfin Corp.

“Armageddon hasn’t resulted from the changes to SALT, but it still may be too early to measure its impact," said Matt Dalton, chief executive officer of Rye Brook, New York- based Belle Haven Investments, which manages $9 billion of municipal bonds. “You see more mansions listed in New York. Manhattan real estate sales just had their worst quarter in a decade."

In response, I wish to draw attention to the December11, 2017 article by Daniel Alpert, Managing Partner of Westwood Capital, LLC, titled: The last time Congress pulled off a major tax code overhaul, it triggered a financial disaster.

In the section **Here's what happened last time**, Alpert writes:

As much of 1980s construction and investment was driven by tax benefits, the TRA's elimination of these tax perks made real estate far less attractive and commercial and multifamily property values fell precipitously over several years, with loan losses accelerating correspondingly.

This led to one-third of all U.S. Savings and Loan failing from 1986 through 1995. Including commercial banks and conventional savings banks, over 2,000 U.S. financial institutions failed during that period. In 1989, Congress established the Resolution Trust Corporation in 1989 to resolve or auction off nearly $400 billion in bank assets over the period. The Osteotomy ultimately fell into recession by 1990 and industry fell into depression-like conditions throughout the country by 1991.

The section **A direct threat to home values**, points out:
The problem, then and now, is that we can't just change the tax environment surrounding our major financial assets, real estate being by far the largest (totaling some $70 trillion, compared to the value of all public companies which is about $30 trillion) without impacting demand for those assets and, therefore, value.
Since real estate asset value underpins the largest component of debt owed to

financial institutions and capital markets participants, such disruption - as we saw in the late 80s and again during the global financial crisis beginning in 2008 - can become systemic.

In particular, the new law is targeting the economies of, and real estate in, the nation's most expensive and highly taxed states which - not coincidentally - is where the lion's share of mortgage debt resides.

If someone told you they could pull the tablecloth off your full laden dining room table, would you let them? Well, that's just what Congress is telling us - be prepared to clean up the mess.

In addition, the following relevant real estate related items have appeared in the media, since March 31, 2019:

Manhattan real estate sales fall for sixth straight quarter — longest losing streak in 30 years This CNBC piece highlights that real estate had its worst first quarter since the financial crisis and that total sales fell 3 percent in the first quarter, and marked the sixth straight quarter of declines.

New York City rents just hit a new high, report finds This June 4, 2019 New York Post article reports the median rent for New York City one-bedroom apartments hit $2,980 in May, the highest in at least three years.

These articles are consistent with the SALT Cap being disadvantageous to residential real estate ownership and advantageous to landlords in high SALT states.

TCJA of 2017 SALT Cap Direct and Indirect Benefits to Trump and his Extended Family

Even though the article, ***How-Trump-Benefits-from-the-Trump-GOP-Tax-Law-12-22-17-FINAL*** only mentions the Alternative Minimum Tax (AMT) in passing and fails to mention the Pease Limitation, it is otherwise a robust assessment of the direct benefits the TCJA of 2017 provides to Trump and his extended family. This articles introduction, follows:

Despite his false claim that his tax plan would “cost me a fortune,” President Trump will undoubtedly be among the very wealthy who will benefit enormously from his tax plan. Several elements will be particular boons to Trump and his family. Trump’s exact tax savings are difficult to estimate since he has refused to release his tax returns unlike every other president over the last 40 years—but it is likely to be at least $11 million a year and perhaps as much as $22 million.

Regarding Trump's extended family The Guardian article, ***Ivanka Trump and Jared Kushner made as much as $135m last year*** was published June 14, 2019.

Perhaps just as important are the indirect benefits to Trump and his extended family, namely, how the SALT Cap shifted the residential real estate dynamic from buying to renting, thereby providing a substantial windfall to high-end landlord in high SALT Cap areas, like the Trump and Kushner families.

TCJA of 2017 SALT Cap and the 2019 IRS Withholding Surprise

If not for the SALT Cap, the 2019 IRS Withholding Surprise would have lacked the depth and breadth of what will ultimately be reported when virtually all 2018 Individual returns are filed by October 15, 1019. Reference to two articles, follow:

Wyden, Schumer & Senate Dems: Americans Facing Surprise Tax Bills Should Not be Penalized for Treasury's Withholding Mistakes

Senate Democrats accuse Treasury of manipulating withholding tables to produce 'phantom windfall'

If the Trump Treasury's action was merely a mistake, the effect was to borrow economic growth from 2019 and push it into 2018 so some mid-term voters would vote accordingly; however, if the action was intentional, the effects could be depicted as stealing economic growth from a post-election period to benefit a pre-election period.

Pay-As-You-Go" (PayGo)

I reviewed the oral and related written testimony of both sessions of the SRM Subcommittee Hearing: Recent Limitations to the SALT Deduction & its Harm to Communities which took place on June 25, 2019, with the aim of supplying suggestions for "Pay-As-You-Go" (PayGo) revenue raising offsets for any SALT cap repeal/relief that the SRM Subcommittee may ultimately consider and to the degree possible, overcome the objections/criticisms expressed, so that maximum bipartisan support can be achieved.

The vast majority of objections/criticisms expressed in connection with proposed SALT cap repeal/relief suggested to date fall into the following two broad categories:

SALT cap repeal/relief would distributionally benefit higher income taxpayers

Any SALT cap repeal/relief would increase the tax burden of most, if not, all U.S. taxpayers

Regarding Pay-As-You-Go" (PayGo) revenue raising offsets in connection with the enactment of the SALT cap, the Pease Limitation (directly related to itemized deductions) was repealed and the Alternative Minimum Tax (AMT), indirectly related, was modified. Both of the changes were, on balance, greater windfalls to higher income taxpayers, therefore reinstituting the Pease Limitation and dialing down on the AMT relief would go a long way toward reducing the distributional criticism and cost of any SALT cap repeal/relief.

Even though greater reduction in the TCJA of 2017 Alternative Minimum Tax (AMT) relief may be justified, in all likelihood it will detract from maximizing bipartisan support. This leads to consideration of an area the has been ineffectually dealt with by U.S. tax-policy-makers since 1983, namely, corporate tax inversion, which enables unpatriotic corporations to substantially reduce their U.S. and state corporate taxes, while patriotic domestic corporations are challenged by an uneven playing field in their competition with the inverters. The antidote to corporate tax inversion is to enact legislation that mitigates profit shifting, resulting from corporate opportunistic accounting practices and to curtail corporate tax spends that create an uneven playing field for patriotic domestic businesses. Two articles relating to this, follow:

Profit Shifting Before and After the Tax Cuts and Jobs Act

Tax Expenditures Before and After the Tax Cuts and Jobs Act

By choosing a PayGo that fixes international global taxation, an area long neglected, the SRM Subcommittee will not increase the tax burden of any U.S. individual taxpayer and will be choosing an alternative that not could be justifiably criticized on a distributional basis.

Thank you, Chairman Thompson, Ranking Member Smith, and distinguished members of the Subcommittee for the opportunity to submit this written testimony.

Respectfully submitted,

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